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CERTIFIED MAIL

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[REDACTED]

JAN 13 1993

Dear Applicant:

We have considered your applications for recognition of exemption from federal income tax under sections 501(c)(3), 501(c)(4), and 501(c)(7) of the Internal Revenue Code. We have determined that you do not qualify for exemption under any of these Code sections. Our reasons for this determination and the facts upon which it is based are explained below.

Facts

Your applications for recognition of exemption from federal income tax under the Code sections stated above were submitted concurrently.

Your submitted information discloses that you were incorporated on [REDACTED], under the laws of the State of [REDACTED]. Your purposes, as stated in your articles of incorporation, are "help poor, needy and homeless people, housing, food, clothing".

Your articles of amendment were filed with the State of [REDACTED] on [REDACTED]. Your articles of amendment disclose that you were incorporated as a church and charity group. Your provision for dissolution within your articles of amendment contains no intent to distribute your assets for an exempt purpose within the meaning of Code section 501(c)(3) upon your dissolution. Instead, it provides that upon the death of your founder and overseer, [REDACTED], a member of her family will replace her.

Part II of your Form 1023, Application for Recognition of Exemption under Section 501(c)(3) of the Internal Revenue Code, discloses your sources of revenue, the compensation paid to your governing body, and your activities. Your revenue is stated to come from fund-raising, other organizations, and government contracts. Compensation to be paid to your founder, [REDACTED], will be on a percentage based on fund-raisers. Your activities will involve providing free gifts in return for large contributions, providing job services for a fee, and providing mortgage services for a fee. You intend to intervene in political campaigns.

Part II of your Form 1024, Application for Recognition of Exemption under Section 501(a), discloses your sources of revenue, the compensation paid to your governing body, and your activities. Your revenue is stated to come from spiritual services, government contracts, contribution solicitations, and the sale of products as fund-raising items. Compensation to be paid to your founder, [REDACTED], will be paid on a percentage basis. Your stated activities consist of conducting spiritual services; housing foster and day-care children; providing food, clothing, and shelter for poor families; and helping churches spiritually and financially. You have not submitted any information to substantiate who in your organization will conduct these activities, how these activities will be conducted, and where these activities will be conducted.

Schedule B of your Form 1024 contains information regarding your intent to apply for recognition of exemption under Code section 501(c)(4). You indicated that you will perform services for members, shareholders, and others. Such services were stated to consist of programs relating to mortgages, food, housing, and jobs. You provided no details as to who would conduct these activities, and where and how these activities will be conducted. You also claimed exemption as a homeowners association and provided no details explaining how you will conduct activities relating to this exemption.

Schedule D of your Form 1024 contains information regarding your intent to apply for recognition of exemption under Code section 501(c)(7). You indicated that you intend to seek public patronage of your facilities or activities by advertisement. You also indicated that nonmembers, other than guests of members, will be permitted to use your facilities or attend your functions. You explained that such nonmember participation will involve spiritual services, a housing program by income, day care by income, and a soup kitchen.

Law

Section 501(c)(3) of the Internal Revenue Code provides for the exemption from federal income tax for corporations organized and operated exclusively for religious, charitable, scientific, testing for public safety, literary, or educational purposes, or to foster national or international amateur sports competition, or for the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private shareholder or individual, no substantial part of the activities of which is carrying on propaganda or otherwise attempting to influence legislation, and which does not participate or intervene in any political campaign on behalf of any candidate for public office.

Section 1.501(a)-1(c) of the Income Tax Regulations defines the words "private shareholder or individual" as referring to persons having a personal and private interest in the activities of the organization.

Section 1.501(c)(3)-1(a)(1) of the Regulations provides that to be exempt as an organization described in Code section 501(c)(3), an organization must be both organized and operated exclusively for one or more of the purposes specified in such section. If an organization fails to meet either the organizational test or the operational test, it is not exempt.

Section 1.501(c)(3)-1(b)(4) of the Regulations provides that an organization is not organized exclusively for one or more exempt purposes unless its assets are dedicated to an exempt purpose. An organization's assets will be considered dedicated to an exempt purpose if upon dissolution, such assets would by reason of a provision in the organization's articles or by operation of law, be distributed for one or more exempt purposes, or to the Federal government, or to a State or local government, for a public purpose, or would be distributed by a court to another organization to be used in such manner as in the judgement of the court will best accomplish the general purposes for which the dissolved organization was organized.

Section 1.501(c)(3)-1(c)(1) of the Regulations provides that an organization will be regarded as "operated exclusively" for one or more exempt purposes only if it engages primarily in activities which accomplish one or more of such exempt purposes specified in Code section 501(c)(3). An organization will not be so regarded if more than an insubstantial part of its activities is not in furtherance of an exempt purpose.

Section 1.501(c)(3)-1(c)(2) of the Regulations provides that an organization is not operated exclusively for one or more exempt purposes if its net earnings inure in whole or in part to the benefit of private shareholders or individuals. Section 1.501(a)-1(c) of the Regulations defines the words "private shareholder or individual" in section 501 as referring to persons having a personal and private interest in the activities of the organization.

Section 1.501(c)(3)-1(c)(3) of the Regulations provides that an organization is not operated exclusively for one or more exempt purposes if it is an "action" organization. Subparagraph (iii) of this section defines an "action" organization as an organization that participates or intervenes directly or indirectly on behalf of or in opposition to any candidate for public office.

In Church of Scientology of California, CA-9, 87-2 USTC, Paragraph 9446, the IRS properly revoked a church's tax-exempt status because a portion of its earnings inured to the benefit of the church's founder, his family, and a private noncharitable corporation controlled by key church officials. A finding of inurement was supported by the fact that the founder received excessive royalty payments and payments based on a percentage of the church's total receipts.

[REDACTED]

In Universal Church of Jesus Christ, Inc., 55 TCM 144, the tax-exempt status of an organization incorporated for religious purposes was properly revoked. The organization's commercial activities were far more than incidental to its exempt activities and the organization failed to prove that none of its income inured to the benefit of private individuals.

Section 501(c)(4) of the Code provides, in part, for the exemption from federal income tax for civic leagues or organizations not organized for profit but operated exclusively for the promotion of social welfare.

Section 1.501(c)(4)-1(a)(1) of the Regulations provides that a civic league or organization may be exempt as an organization described in Code section 501(c)(4) if it is not organized or operated for profit, and is operated exclusively for the promotion of social welfare.

Section 1.501(c)(4)-1(a)(2)(i) of the Regulations provides that an organization is operated exclusively for the promotion of social welfare if it is primarily engaged in promoting in some way the common good and general welfare of the people of the community. An organization embraced within this section is one which is operated primarily for the purpose of bringing about civic betterments and social improvements.

Section 1.501(c)(4)-1(a)(2)(ii) of the Regulations provides that the promotion of social welfare does not include direct or indirect participation or intervention in political campaigns on behalf of or in opposition to any candidate for public office. Nor is an organization operated primarily for the promotion of social welfare if its primary activity is carrying on a business with the general public in a manner similar to organizations which are operated for profit.

Section 501(c)(7) of the Code provides for the exemption from federal income tax for clubs organized for pleasure, recreation, and other nonprofitable purposes, substantially all of the activities of which are for such purposes, and no part of the net earnings of which inures to the benefit of any private shareholder or individual.

Section 1.501(c)(7)-1(a) of the Regulations states that the exemption provided by Code section 501(a) for organizations described in Code section 501(c)(7) applies only to clubs which are organized and operated exclusively for pleasure, recreation, and other nonprofitable purposes, but does not apply to any club if any part of its net earnings inures to the benefit of any private shareholder.

Discussion

The dissolution provision within your articles of amendment do not provide for distributing your assets for an exempt purpose within the meaning of Code section 501(c)(3) upon your dissolution. Instead, your dissolution provision provides that your founder and overseer, [REDACTED], will be replaced by a member of her family upon her death. You therefore do not meet the organizational test of Code section 501(c)(3).


Your activities of providing free gifts in return for large contributions, providing job services for a fee, and providing mortgage services for a fee do not accomplish one or more of the exempt purposes specified in Code section 501(c)(3). No evidence exists within your Form 1023 to demonstrate that such activities will not be more than insubstantial. Because such activities are commercial in nature and more than incidental, your operations are similar to those of the organization found in Universal Church of Jesus Christ, Inc. You therefore do not meet the operational test of Code section 501(c)(3) as provided in Regulations section 1.501(c)(3)-1(c)(1).

The compensation you will pay to your founder is based upon a percentage of fund-raiser proceeds. Compensation of this nature is indicative of inurement of your earnings for the benefit of your founder, as was found in Church of Scientology of California. You therefore do not meet the operational test of Code section 501(c)(3) as provided in Regulations section 1.501(c)(3)-1(c)(2).

Your intent to intervene in political campaigns indicates that you are an "action" organization as defined in Regulations section 1.501(c)(3)-1(c)(3). You therefore do not meet the operational test of Code section 501(c)(3) as provided in Regulations section 1.501(c)(3)-1(c)(3).

Because you do not meet both the organizational and operational tests of Code section 501(c)(3), you do not qualify for exemption from Federal income tax as an organization described under that Code section.


Your activities of providing free gifts in return for large contributions, providing job services for a fee, and providing mortgage services for a fee are commercial in nature and more than incidental. The compensation on a percentage basis that you will pay to your founder is indicative of inurement of your net earnings for your founder's private benefit. You intend to intervene in political campaigns. Such operations do not constitute the promotion of social welfare as that term is provided for within Regulations section 1.501(c)(4)-1(a)(2). Per Regulations section 1.501(c)(4)-1(a)(1), you do not qualify as a civic organization described in Code section 501(c)(4) because you are operated for profit and are not operated exclusively for the promotion of social welfare.


You are not organized and operated exclusively for pleasure, recreation, and other nonprofitable purposes. The compensation on a percentage basis that you will pay to your founder is indicative of inurement of your net earnings for your founder's private benefit. You therefore do not meet the requirements of Regulations section 1.501(c)(7)-1, and do not qualify as a social club described in Code section 501(c)(7).

In accordance with this determination, you are a taxable entity and must file Federal income tax returns on Form 1120. If you do not accept our findings, we recommend that you request a conference with a member of our Regional Office of Appeals. Your request for a conference should include a written appeal giving the facts, law, and any other information to support your position as explained in the enclosed Publication 892. You will then be contacted to arrange a date for a conference. The conference may be held at the Regional Office or, if you request, at a mutually convenient District Office. If we do not hear from you within 30 days from the date of this letter, this determination will become final.

If you do not protest this proposed determination in a timely manner, it will be considered as a failure to exhaust available administrative remedies. Section 7423(b)(2) of the Internal Revenue Code provides, in part, that, "A declaratory judgment or decree under this section shall not be issued in any proceeding unless the Tax Court, the Court of Claims, or the district court of the United States for the District of Columbia determines that the organization involved has exhausted administrative remedies available to it within the Internal Revenue Service."

Sincerely yours,


District Director

Enclosure: Publication 892

cc: State Attorney General 